

HAROLD SARGENT

IBLA 85-630

Decided December 15, 1987

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, terminating in part grazing lease A-07916.

Affirmed.

1. Alaska: Grazing--Grazing and Grazing Lands--Grazing Leases:
Cancellation or Reduction

When a grazing lessee agrees to an additional stipulation providing that the grazing lease may be terminated upon 30 days notice if the BLM acts upon a state selection application encompassing the leased lands, BLM need not submit a state grazing lease in conjunction with the notice of termination.

APPEARANCES: Harold Sargent, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Harold Sargent appeals from the April 16, 1985, decision of the Anchorage District Office, Bureau of Land Management (BLM), declaring that grazing lease A-07916 would be terminated in part for those portions of the leased lands to be conveyed to the State of Alaska.

The original grazing lease for lands located on Kodiak Island, Alaska, was issued by the General Land Office on December 22, 1932. Appellant received the lease as the result of assignment approved by BLM on January 3, 1979, for a term expiring on December 31, 1997.

Part of the lands subject to grazing lease A-07916 is included in State selection applications AA 570, AA 651, AA 669, and A 062768, made under authority of section 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339). Additional conditions and stipulations were added to the lease terms to give notice to the lessee of the impending cancellation of the lease arising from the State selections. Additional condition and stipulation (1) states:

This lease will be cancelled upon 30 days written notice to the lessee when the BLM is able to act upon the State's selection applications. The lessee shall thereupon be entitled to the right to apply to the State for a preference right grazing lease under

A538. 05.095, [1/] which specifies that the lessee shall enjoy any of the rights or benefits he enjoyed under the Federal lease, through the statutory life of the Federal lease
* * *

Appellant filed a timely notice of appeal from BLM's decision on May 20, 1985. The notice of appeal states the following:

It is the intent of this letter to appeal the transfer of BLM lease number A07916 to the State at this time because:

a) The State does not but should have a lease agreement available for inspection prior to the transfer so that it may be reviewed as to the exact terms. Just this one item is vitally necessary for the development plan I have submitted on the lease.

b) It is my understanding that the Woody Island Natives (Lesnoi, Inc.) that have selected some of the Federal land have been determined in court to be an invalid organization.

The decision appealed from mentions that certain of the lands included in appellant's lands "eventually will be conveyed to the Wood/Island Natives (Lesnoi, Inc.), but no date for this conveyance can be projected at this time." However, the specific action announced in the April 16, 1985, decision, and therefore the only matter properly before the Board in this appeal, is BLM's notice to the lessee to terminate "those portions of the lease which will be conveyed to the State of Alaska."

[1] In Charles H. Dorman, 93 IBLA 109 (1986), the Board considered the very argument presented here. That decision reads in part as follows:

Appellants argue that the lease should not be terminated because on the date of notice of lease termination, the State did not have a written lease agreement to replace the ones being terminated. * * * [W]e cannot find this to be a basis for finding BLM's action to be contrary to the terms and conditions of the leases between appellants and BLM. * * *

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* * * As noted in Sandra M. Pestrikoff, 23 IBLA 197 (1976), the State's rights date from the date of filing the application, and a State selection application is properly treated as a petition to cancel a conflicting grazing lease. BLM may therefore, process the selection application, and all else being in order, tentatively approve the selection for patent.

1/ The proper citation is AS 38.05.075(b). This State statute provides:

"(b) When a valid existing federal grazing lease is cancelled to allow state selection of the area under lease, the lessee of the land has the preference right to lease the land without competitive bidding for a term equal to that originally granted in the cancelled federal lease and upon terms as favorable to the lessee as those contained in the cancelled federal lease."

BLM can terminate a grazing lease pursuant to statutory or regulatory authority or the terms of the lease. Even if there were no lease terms permitting termination of the lease in contemplation of transfer of the lands to the State of Alaska, BLM would have discretionary authority to do so. See 43 CFR 4230.1; Estate of C. Walter Keaster, 47 IBLA 363 (1980). There being authority to terminate the lease under the regulations and the lease terms, we will now examine the provisions of Additional Stipulation (1) to determine if the lease terms required the State or BLM to submit a substitute * * * State lease as a condition precedent to termination.

The applicable provision of Additional Stipulation (1) provides that, upon receipt of notice of termination lessee shall be "entitled to the right to apply to the State for a preference right grazing lease under A538.05.075 (sic)." (Emphasis added.) This special stipulation does not assure that a state lease will be comparable to the terms and conditions of the existing lease. It merely indicates that, during the period between notice and tentative approval, appellants have the right to apply for a grazing lease with the State of Alaska, thus establishing a preferential position pursuant to AS 38.05.075. The provisions of Additional Stipulation (1) only provide that BLM will not oppose appellants' application. We find no error in the April 1, 1985, BLM decision which would cause us to reverse that decision. (Footnotes omitted).

93 IBLA 111, 112.

The Board's decision in Dorman is dispositive of this appeal. 2/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Wm. Philip Horton
Chief Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge

2/ The terms of statute and implementing regulations authorize the lessee to request a hearing on review of a decision affecting grazing privileges. 43 U.S.C. § 316m (1982); 43 CFR Subpart 4240. Appellant has not requested a hearing in this case. In view of the absence of any apparent issue of material fact which would affect the outcome of the appeal, we decline to order a hearing sua sponte. See Estate of C. Walter Keaster, supra at 365.

